

## **EVERY STUDENT SUCCEEDS ACT (ESSA) BRIEF:**

### **EDUCATIONAL STABILITY OF CHILDREN IN FOSTER CARE**

#### **INTRODUCTION**

In recognition of the unique needs of children involved in the child welfare system, both Federal and State governments have launched efforts to increase school stability and improve education outcomes for students in foster care. The federal ***Fostering Connections to Success and Increasing Adoptions Act of 2008*** took a significant step toward addressing educational stability by requiring State and tribal child welfare agencies collaborate with schools to ensure children in foster care are able to continue attending their school of origin, when in the child's best interest.

In 2011, the Nebraska Supreme Court, Nebraska Department of Education, Nebraska Department of Health and Human Services, and Nebraska Probation Administration established the state's ***Fostering Connections in Education Initiative*** to support school stability and improve education outcomes for students involved in the child welfare, juvenile/criminal justice and behavioral health systems. This initiative emphasizes the importance of cross-systems communication, coordination and collaboration to achieve those goals. Several statewide cross-systems information sharing projects originated out of this effort, such as the *NDE-DHHS State Ward Statistical Snapshot Report*, *automated DHHS Superintendent Letter*, *Notice of Change in Placement Affidavit*, and *Nebraska Juvenile Courts: Education Court Report*.

In January of 2013, Congress passed the ***Uninterrupted Scholars Act (USA)***, amending the ***Family Educational Rights and Privacy Act (FERPA)***, which allows a school to disclose the education records of child in foster care to the State or tribal child welfare agency, without consent from the parent or eligible student.

<sup>1</sup> 20 U.S.C. § 6311(g)(1)(E).

<sup>2</sup> 20 U.S.C. § 6312(c)(5)(A).

In December of 2015, the federal ***Every Student Succeeds Act (ESSA)*** was passed, reauthorizing the ***Elementary and Secondary Education Act of 1965 (ESEA)***. ESSA's provisions for schools related to the educational stability of children in foster care generally mirror similar provisions in the federal ***Fostering Connections Act of 2008*** governing State and tribal child welfare agencies. While ESSA does not create new provisions for the child welfare agencies, it does establish requirements for both the ***State Education Agency*** (Nebraska Department of Education) and ***Local Education Agencies*** (school districts and Educational Service Units) to collaborate with the child welfare agencies to ensure the educational stability of children in foster care.<sup>1</sup> These provisions took effect December 10, 2016.

#### **STATE AND LOCAL POINTS OF CONTACT**

Nebraska's ***Fostering Connections Liaison Network (FCLN)*** was established in 2011, as part of the state's ***Fostering Connections in Education Initiative***. It includes State, regional and local liaisons that serve as primary ***Points of Contact (POC)***<sup>2</sup> within the education, child welfare, juvenile/criminal justice and behavioral health systems. The ***Fostering Connections State Team*** updates the ***FCLN Directory*** at least annually, with distribution to the liaisons in each respective system.

#### **NOTIFICATION OF FOSTER PLACEMENT**

The Nebraska Department of Education, Nebraska Crime Commission, and Nebraska Department of Health and Human Services – Children and Family Services Division (DHHS-CFS) have collaborated to develop a secure e-notification system that electronically notifies the school district's Superintendent within one business day of any of their students becoming



**UPDATED:** February 22, 2021

**SOURCE:** Nebraska's "Fostering Connections in Education" Program  
Nebraska Department of Education - Office of Coordinated Student Support Services

*This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document. For comments regarding this document, contact [nde.guidance@nebraska.gov](mailto:nde.guidance@nebraska.gov).*

a State ward and their current status in the child welfare system. Additional e-notifications are sent to the school by DHHS-CFS when:

- The child changes school districts due to out-of-home placement;
- The child moves to a different out-of-home placement within the same school district;
- The child enters or exits the Youth Rehabilitation and Treatment Center (YRTC) at Geneva or Kearney;
- The parent's education decision-making rights are relinquished or terminated, and a surrogate decision-maker is appointed;
- The parent(s) relinquishes parental rights or those rights are terminated by the Court;
- There is a change in the Case Manager assigned to the child's case;
- At the beginning of each school year to update the school on the child's current status in the child welfare system; and
- The child is no longer a State ward in the legal custody of DHHS.

### **BEST INTEREST DETERMINATIONS**

A child placed in foster care shall remain in the school of origin, unless a determination is made that it is not in that child's best interest. This decision must be based on all factors relating to the child's best interest, including consideration of the appropriateness of the current educational setting and proximity to the school where the child is enrolled at the time of foster placement.<sup>3</sup> A variety of student-centered factors should be considered, including:

- The preferences of the child;
- The preferences of the child's parent(s) or education decision maker(s);
- The child's attachment to the school of origin, including meaningful relationships with staff and peers;
- Placement of the child's sibling(s);
- Influence of the school climate on the child, including safety;
- The availability and quality of services in the school to meet the child's educational and socio-emotional needs;
- History of school transfers and how they have impacted the child;

- How the length of commute would impact the child, based on developmental stage;
- Whether the child is a student with a disability, under the federal ***Individuals with Disabilities Education Act of 1975 (IDEA)*** or ***Section 504 of the Rehabilitation Act of 1973***, who is receiving special education or related aids and services, and if so, the availability of those required services in another school; **and**
- Whether the child is an English Learner receiving language services, and if so, the availability of those required services in another school, consistent with ***Title VI*** and the federal ***Equal Education Opportunities Act (EEOA)***.

When a determination is made that it is not in the child's best interest to remain in the school of origin, the student is to be immediately enrolled in a new school, even if the records normally required for enrollment are not available.<sup>4</sup> The new school must immediately contact the school last attended to obtain the relevant records.<sup>5</sup> Once a best interest determination is made, it is recommended that the school provide this decision and the relevant considerations in writing to all parties involved, in collaboration with the child welfare agency.

### **ADDITIONAL TRANSPORTATION**

Some children in foster care may need additional transportation to remain in the school of origin when in their best interest. However, the cost of this transportation shall **not** be considered when determining the child's best interest. The school must collaborate with the State or local child welfare agency to develop and implement clear written procedures governing how this additional transportation will be promptly provided, arranged and funded, in a cost-effective manner, for the duration of the child's time in foster care.<sup>6</sup> When additional transportation costs are incurred, the *Local Educational Agency (LEA)* will provide transportation to the child's school of origin if:

- The child welfare agency agrees to reimburse the *LEA* for the cost of such transportation;
- The *LEA* agrees to pay the cost of such transportation; **or**
- The *LEA* and child welfare agency agree to share the cost of such transportation.

<sup>3, 4, and 5</sup> 20 U.S.C. § 6311(g)(1)(E)(i)-(iii).

<sup>6</sup> 20 U.S.C. § 6312(c)(5)(B)(i); and 42 U.S.C. § 675(4)(A).

<sup>7</sup> 20 U.S.C. § 6312(c)(5)(B)(ii).